

# House File 391

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## AN ACT

ESTABLISHING A PILOT PROGRAM FOR THE DEVELOPMENT OF  
COGENERATION FACILITIES, PROVIDING FOR THE DEVELOPMENT  
OF RATEMAKING PRINCIPLES AND RATES FOR PILOT PROGRAM  
FACILITIES, AND PROVIDING FOR A FUTURE REPEAL.

1 9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 10

Section 1. NEW SECTION. 15.269 COGENERATION PILOT  
PROGRAM.

1 13 1. DEFINITIONS. For purposes of this section, unless the  
1 14 context otherwise requires:

1 15 a. "Cogeneration pilot project facility" means either a  
1 16 utility-owned cogeneration pilot project facility or a  
1 17 qualified cogeneration pilot project facility. Both a  
1 18 utility-owned cogeneration pilot project facility and a  
1 19 qualified cogeneration pilot project facility must be approved  
1 20 by the department of economic development for participation in  
1 21 the cogeneration pilot program established pursuant to  
1 22 subsection 2.

1 23 b. "Energy sales agreement" means a negotiated agreement  
1 24 for the sale of the electric output from the cogeneration  
1 25 pilot project, between a qualified cogeneration pilot project  
1 26 facility and an electric utility.

1 27 c. "Qualified cogeneration pilot project facility" means a  
1 28 qualifying facility as defined in the federal Public Utility  
1 29 Regulation Policies Act of 1978, 16 U.S.C. } 2601 et seq., and  
1 30 related federal regulations.

1 31 d. "Utility-owned cogeneration pilot project facility"  
1 32 means a cogeneration facility owned, in whole or in part, by a  
1 33 rate-regulated electric utility that produces electric energy  
1 34 and thermal energy for commercial purposes and is not a  
1 35 qualifying facility as defined in the federal Public Utility  
2 1 Regulatory Policies Act of 1978, 16 U.S.C. } 2601 et seq., and  
2 2 related federal regulations.

2 3 2. PILOT PROGRAM ESTABLISHED.

2 4 a. It is the policy of this state to foster both the  
2 5 development of cogeneration in Iowa and related economic  
2 6 development associated with cogeneration projects.

2 7 It is the policy of this state that cogeneration projects  
2 8 operate to the mutual benefit of businesses, industry, and  
2 9 electric utilities in Iowa, financially and otherwise.

2 10 b. A cogeneration pilot program is established within the  
2 11 department of economic development to obtain reliable energy  
2 12 and economic benefits associated with successful development  
2 13 of new, Iowa-based, electric power cogeneration strategies.  
2 14 The department shall develop and administer the cogeneration  
2 15 pilot program, according to the following:

2 16 (1) The department may choose up to two projects for  
2 17 participation in the cogeneration pilot program:

2 18 (a) Each cogeneration pilot project facility must involve  
2 19 two hundred megawatts or less of electricity, in combination  
2 20 with one or more other cogeneration project facilities.

2 21 (b) Each cogeneration pilot project facility must be  
2 22 constructed in Iowa.

2 23 (c) Each project chosen for participation in the  
2 24 cogeneration pilot program must also have the approval and  
2 25 support of the department for economic development purposes.

2 26 (2) The department may adopt specific application  
2 27 guidelines and deadlines by rule pursuant to chapter 17A, or  
2 28 follow established departmental procedures and guidelines, if  
2 29 applicable. The guidelines, rules, and procedures shall not  
2 30 require participation in a cogeneration pilot project or  
2 31 program by any rate-regulated public utility providing retail  
2 32 electric service to more than five hundred twenty thousand  
2 33 customers in the state as of January 1, 2003, but any such  
2 34 utility shall have the option to participate.

2 35 (3) The department shall assist in the implementation of  
3 1 the cogeneration pilot program, and monitor the progress of  
3 2 the participants. The department shall file its initial  
3 3 report assessing the results of the pilot program with the  
3 4 general assembly by December 1, 2004, and shall also file  
3 5 yearly pilot program progress updates with the general

3 6 assembly through December 1, 2007.

3 7 c. The selection of a cogeneration project under this  
3 8 program does not authorize an electric utility to furnish or  
3 9 offer to furnish electric services to the public outside its  
3 10 assigned area of service established under sections 476.22  
3 11 through 476.26.

3 12 3. FUTURE REPEAL. This section is repealed July 1, 2007.  
3 13 However, any utilities board proceeding that involves a  
3 14 cogeneration pilot project facility that is pending on July 1,  
3 15 2007, and that is being conducted pursuant to section 476.53  
3 16 shall be completed notwithstanding the repeal of this section.

3 17 Sec. 2. Section 476.53, Code 2003, is amended by adding  
3 18 the following new subsection:

3 19 NEW SUBSECTION. 2A. For purposes of this section, unless  
3 20 the context otherwise requires, the terms "cogeneration pilot  
3 21 project facility", "energy sales agreement", "qualified  
3 22 cogeneration pilot project facility", and "utility-owned  
3 23 cogeneration pilot project facility" mean the same as defined  
3 24 in section 15.269.

3 25 Sec. 3. Section 476.53, subsections 3 and 4, Code 2003,  
3 26 are amended to read as follows:

3 27 3. a. ~~if a rate-regulated public utility files~~ The board  
3 28 shall specify in advance, by order issued after a contested  
3 29 case proceeding, the ratemaking principles that will apply  
3 30 when the costs of the electric power generating facility,  
3 31 alternate energy production facility, cogeneration pilot  
3 32 project facility, or energy sales agreement are included in  
3 33 regulated electric rates whenever a rate-regulated public  
3 34 utility does any of the following:

3 35 (1) Files an application pursuant to section 476A.3 to  
4 1 construct in Iowa a baseload electric power generating  
4 2 facility with a nameplate generating capacity equal to or  
4 3 greater than three hundred megawatts or a combined-cycle  
4 4 electric power generating facility, or an alternate energy  
4 5 production facility as defined in section 476.42, ~~or if a~~  
4 6 ~~rate-regulated public utility leases.~~

4 7 (2) Leases or owns in Iowa, in whole or in part, a new  
4 8 baseload electric power generating facility with a nameplate  
4 9 generating capacity equal to or greater than three hundred  
4 10 megawatts or a combined-cycle electric power generating  
4 11 facility, or a new alternate energy production facility as  
4 12 defined in section 476.42, ~~the board shall specify in advance,~~  
4 13 ~~by order issued after a contested case proceeding, the~~  
4 14 ~~ratemaking principles that will apply when the costs of the~~  
4 15 ~~facility are included in regulated electric rates.~~

4 16 (3) Enters into an agreement for the purchase of the  
4 17 electric power output of a qualified cogeneration pilot  
4 18 project facility or constructs a utility-owned cogeneration  
4 19 pilot project facility pursuant to section 15.269.

4 20 b. In determining the applicable ratemaking principles,  
4 21 the board shall not be limited to traditional ratemaking  
4 22 principles or traditional cost recovery mechanisms.

4 23 c. In determining the applicable ratemaking principles,  
4 24 the board shall make the following findings:

4 25 (1) The rate-regulated public utility has in effect a  
4 26 board-approved energy efficiency plan as required under  
4 27 section 476.6, subsection 19.

4 28 (2) The rate-regulated public utility has demonstrated to  
4 29 the board that the public utility has considered other sources  
4 30 for long-term electric supply and that the facility, ~~or lease,~~  
4 31 ~~or cogeneration pilot project facility~~ is reasonable when  
4 32 compared to other feasible alternative sources of supply. The  
4 33 rate-regulated public utility may satisfy the requirements of  
4 34 this subparagraph through a competitive bidding process, under  
4 35 rules adopted by the board, that demonstrate the facility,  
5 1 ~~energy sales agreement,~~ or lease is a reasonable alternative  
5 2 to meet its electric supply needs.

5 3 d. The applicable ratemaking principles shall be  
5 4 determined in a contested case proceeding, which proceeding  
5 5 may be combined with the proceeding for issuance of a  
5 6 certificate conducted pursuant to chapter 476A.

5 7 e. The order setting forth the applicable ratemaking  
5 8 principles shall be issued prior to the commencement of  
5 9 construction or lease of the facility, ~~or execution of an~~  
5 10 ~~energy sales agreement related to the cogeneration pilot~~  
5 11 ~~project facility.~~

5 12 f. Following issuance of the order, the rate-regulated  
5 13 public utility shall have the option of proceeding ~~with~~  
5 14 ~~construction or lease of the facility in Iowa or withdrawing~~  
5 15 ~~according to either of the following:~~

5 16 (1) Withdrawing its application for a certificate ~~under~~

5 17 pursuant to chapter 476A.  
5 18 (2) Proceeding with the construction or lease of the  
5 19 facility or implementation of an energy sales agreement  
5 20 related to a cogeneration pilot project facility.

5 21 g. Notwithstanding any provision of this chapter to the  
5 22 contrary, the ratemaking principles established by the order  
5 23 issued pursuant to paragraph "e" shall be binding with regard  
5 24 to the specific electric power generating facility or  
5 25 cogeneration pilot project facility in any subsequent rate  
5 26 proceeding.

5 27 4. The utilities board and the consumer advocate may  
5 28 employ additional temporary staff, or may contract for  
5 29 professional services with persons who are not state  
5 30 employees, as the board and the consumer advocate deem  
5 31 necessary to perform required functions as provided in this  
5 32 section, including but not limited to review of power purchase  
5 33 contracts, review of emission plans and budgets, and review of  
5 34 ratemaking principles proposed for construction or lease of a  
5 35 new generating facility or a cogeneration pilot project

6 1 facility. Beginning July 1, 2002, there is appropriated out  
6 2 of any funds in the state treasury not otherwise appropriated,  
6 3 such sums as may be necessary to enable the board and the  
6 4 consumer advocate to hire additional staff and contract for  
6 5 services under this section. The costs of the additional  
6 6 staff and services shall be assessed to the utilities pursuant  
6 7 to the procedure in section 476.10 and section 475A.6.

6 8 Sec. 4. Section 476.53, Code 2003, is amended by adding  
6 9 the following new subsection:

6 10 NEW SUBSECTION. 5. DETERMINATION OF AVOIDED COST FOR  
6 11 COGENERATION PROJECTS.

6 12 a. A qualified cogeneration pilot project facility may  
6 13 file a petition with the board for a determination of the  
6 14 avoided cost of an electric utility as provided in the federal  
6 15 Public Utility Regulatory Policies Act of 1978 and related  
6 16 federal regulations, if such a determination has not been made  
6 17 within the last twenty-four months or if there is reason to  
6 18 believe the avoided cost has changed.

6 19 b. The board shall issue its determination of the electric  
6 20 utility's avoided cost within one hundred twenty days after  
6 21 the petition is filed.

6 22 c. The board, for good cause shown, may extend the  
6 23 deadline for issuing the decision for an additional period not  
6 24 to exceed one hundred twenty days.

6 25 d. The board shall not issue a decision under this  
6 26 subsection without providing notice and an opportunity for  
6 27 hearing.

6 28 e. The utilities board and the consumer advocate may  
6 29 employ additional temporary staff, or may contract for  
6 30 professional services with persons who are not state  
6 31 employees, as the board and the consumer advocate deem  
6 32 necessary to perform required functions as provided in this  
6 33 subsection. There is appropriated out of any funds in the  
6 34 state treasury not otherwise appropriated, such sums as may be  
6 35 necessary to enable the board and the consumer advocate to  
7 1 hire additional staff and contract for services under this  
7 2 section. The costs of the additional staff and services shall  
7 3 be assessed to the electric utility pursuant to the procedure  
7 4 in sections 476.10 and 475A.6.

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CHRISTOPHER C. RANTS  
Speaker of the House

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MARY E. KRAMER  
President of the Senate

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7 16 I hereby certify that this bill originated in the House and  
7 17 is known as House File 391, Eightieth General Assembly.

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MARGARET THOMSON  
Chief Clerk of the House

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7 23 Approved \_\_\_\_\_, 2003

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7 27 THOMAS J. VILSACK

